

SENATE BILL No. 473

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-5-105.

Synopsis: Wage garnishment. Amends the wage garnishment law to give a garnishment order priority over a child support withholding order to the extent that the support withholding is not diminished by the garnishment. (Current law gives priority to a child support order.)

Effective: July 1, 1999.

Washington

January 13, 1999, read first time and referred to Committee on Judiciary.



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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 473

A BILL FOR AN ACT to amend the Indiana Code concerning garnishment.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-5-105 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 105. (1) For the
3 purposes of IC 24-4.5-5-101 through IC 24-4.5-5-108:

4 (a) "disposable earnings" means that part of the earnings of an
5 individual, including wages, commissions, income, rents, or
6 profits remaining after the deduction from those earnings of
7 amounts required by law to be withheld;

8 (b) "garnishment" means any legal or equitable proceedings
9 through which the earnings of an individual are required to be
10 withheld by a garnishee, by the individual debtor, or by any other
11 person for the payment of a judgment; and

12 (c) "support withholding" means that part of the earnings that are
13 withheld from an individual for child support in accordance with
14 the laws of this state.

15 (2) Except as provided in subsection (8), the maximum part of the
16 aggregate disposable earnings of an individual for any workweek which
17 is subjected to garnishment to enforce the payment of one (1) or more
18 judgments against him may not exceed:



(a) twenty-five percent (25%) of his disposable earnings for that week; or

(b) the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable;

whichever is less. In the case of earnings for a pay period other than a week, the earnings shall be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section.

(3) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or support withholding to enforce any order for the support of any person shall not exceed:

(a) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(b) where such individual is not supporting such a spouse or dependent child described in subdivision (a), sixty percent (60%) of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent (50%) specified in subdivision (a) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subdivision (b) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or support withholding to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such workweek.

(4) No court may make, execute, or enforce an order or process in violation of this section.

(5) An employer who is required to make deductions from an individual's disposable earnings pursuant to a garnishment order or series of orders arising out of the same judgment debt (excluding a judgment for payment of child support) may collect, as a fee to compensate the employer for making these deductions, an amount equal to the greater of twelve dollars (\$12) or three percent (3%) of the total amount required to be deducted by the garnishment order or series of orders arising out of the same judgment debt. If the employer chooses to impose a fee, the fee shall be allocated as follows:

(a) One-half (1/2) of the fee shall be borne by the debtor, and that amount may be deducted by the employer directly from the

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employee's disposable earnings.

(b) One-half (1/2) of the fee shall be borne by the creditor, and that amount may be retained by the employer from the amount otherwise due the creditor.

The deductions made under this subsection for a collection fee do not increase the amount of the judgment debt for which the fee is collected for the purpose of calculating or collecting judgment interest. This fee may be collected by an employer only once for each garnishment order or series of orders arising out of the same judgment debt. The employer may collect the entire fee from one (1) or more of the initial deductions from the employee's disposable earnings. Alternatively, the employer may collect the fee ratably over the number of pay periods during which deductions from the employee's disposable earnings are required.

(6) The deduction of the garnishment collection fee under subsection (5)(a) or subsection (7) is not an assignment of wages under IC 22-2-6.

(7) An employer who is required to make a deduction from an individual's disposable earnings in accordance with a judgment for payment of child support may collect a fee of two dollars (\$2) each time the employer is required to make the deduction. The fee may be deducted by the employer from the individual's disposable earnings each time the employer makes the deduction for support. If the employer elects to deduct such a fee, the amount to be deducted for the payment of support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be deducted under subsection (3).

(8) A support withholding order takes priority over a garnishment order irrespective of their dates of entry or activation. If a person is subject to a support withholding order and a garnishment order, the garnishment order shall be honored only to the extent that disposable earnings withheld under the support withholding order do not exceed the maximum amount subject to garnishment as computed under subsection (2); **garnishment order takes priority over a support withholding order. However, the:**

(a) sum of the garnishment and support withholding may not exceed the maximum amounts permitted to be deducted under subsection (3); and

(b) support withholding may not be reduced by the garnishment under this section.



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